

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 941 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? NO

2. To be referred to the Reporter or not? NO

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3. Whether Their Lordships wish to see the fair copy
of the judgement? NO

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge?
NO

INDRASINH M JANWAR

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

MR NP NANAVATI for Petitioner

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 02/04/97

ORAL JUDGEMENT

Petitioner is serving as a Driver under the
Respondent. On the date of incident, i.e., on 10th
October, 1992, petitioner was driving a vehicle which
collided with an on-coming truck, and as a result, the

vehicle was damaged to the tune of Rs. 45,000/=. A disciplinary proceeding was initiated against the petitioner for being remiss in discharge of his duties. It is alleged that one Miss JB Gathani was travelling in the said vehicle and she instructed the petitioner to drive slowly. Petitioner, however, did not pay attention to the said instructions and on account of his reckless and negligent driving, vehicle collided with an on-coming truck. After holding due inquiry, the Inquiry Officer held that looking to the nature of accident, petitioner could not have been driving the vehicle @ 80 KmPh as was deposed by the only witness Ms. Gathani. Thus, the Inquiry Officer came to the conclusion that the charge levelled against the petitioner was not proved. The Disciplinary Authority i.e., the District Development Officer did not agree with the findings recorded by the Inquiry Officer, he therefore, issued a show cause notice to the petitioner on 23rd February, 1993. The petitioner replied to the said show cause notice. Considering his written submissions as well as his oral representation, the Disciplinary Authority held that the petitioner was negligent in driving his vehicle which resulted into damage to the vehicle. Considering his long service, under Order dated 12th September, 1994, the Disciplinary Authority imposed a punishment of with-holding of four increments with future effect. Feeling aggrieved, petitioner preferred an appeal before the Development Commissioner. The Development Commissioner considered the arguments advanced by the petitioner and records of the matter, and reduced the penalty imposed upon the petitioner and substituted it by a punishment of with-holding of two increments without future effect.

It is this order of appellate authority which is subject matter of challenge in this petition. It is contended that there was no evidence to hold that the petitioner was rash and negligent in driving his vehicle and the findings recorded by the Disciplinary Authority is based on no evidence. It is further contended that no criminal prosecution has been lodged against the petitioner, while a criminal prosecution is lodged against the truck driver. Thus, it was the truck driver who was negligent in driving his vehicle and in absence of criminal complaint, petitioner cannot be held to be negligent in driving his vehicle.

None of the above referred contentions is tenable. It is not disputed that the vehicle did suffer damage on account of the accident in question. The only witness i.e., Miss JB Gathani has been examined and it has been established that inspite of Miss Gathani's

instructions, petitioner continued to drive vehicle at an excessive speed. Further, there being no other witness to the accident, no other witness has been examined by the Disciplinary Authority, therefore, it cannot be said that there was no evidence to prove the case of a Disciplinary Authority.

It is true that the Inquiry Officer has not believed the statement of witness Ms. Gathani. However, it is not imperative for the disciplinary authority to accept the findings recorded by the Inquiry Officer. He may disagree with such findings. All that he would be required to do is to record his findings and give an opportunity to the delinquent to contest such findings. In the present case, the procedure appears to have been followed. It is suggested by Mr. Nanavati that disciplinary authority did not record his finding of guilt or atleast such findings are not served upon the petitioner or the petitioner is not given opportunity to contest the same. The suggestion cannot be accepted. Such findings would ordinarily be incorporated in the show cause notice that is issued by the disciplinary authority. Petitioner was served with a show cause notice issued by the disciplinary authority and petitioner did submit his reply to the show cause notice. Copy of the show cause notice is not produced by the petitioner. It, therefore, cannot be believed that the petitioner has not been afforded opportunity to contest the finding of guilty recorded by the disciplinary authority.

So far as criminal prosecution is concerned, it is not necessary that in each and every case criminal prosecution is lodged against the offender. Absence of criminal prosecution would not absolve the petitioner from his liability of being answerable to his employer. In my view, the imputation of charge levelled against the petitioner having been proved, the petitioner is liable to be visited with penalty. The Disciplinary Authority as well as the Appellate Authority both have considered the long service rendered by the petitioner and considering his long service, have imposed a minor penalty of with-holding of two increments, without future effect. In the circumstances, the order of penalty is not required to be interfered with. Petition is, therefore, summarily rejected.

Prakash*